

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 199 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

MANKHARLAL T PATHAK

Appearance:

Mr.D.P.Joshi, APP, for appellant

NOTICE SERVED for Respondent No. 1 and 2

CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE M.H.KADRI

Date of decision: 13/04/99

ORAL JUDGMENT (Per: Kadri, J.)

1. By means of filing this appeal under Section 378 of the Code of Criminal Procedure, 1973, the appellant has challenged the judgment and order dated December 23, 1991, passed by the learned Special Judge, Ahmedabad City, in Special Case No.76 of 1989, whereby, the respondents-original accused have been acquitted of the offences punishable under Sections 13(1) and 13(2) of the Prevention of Corruption Act, 1988.

2. The prosecution case in short is as under: The complainant, Atmaram Mohandas Patel, is a resident of Asarwa, Ahmedabad, and he along with his friend, Chunilal Ganesh, who is having a tailoring shop near the complainant's shop of fabrication of iron, had gone to see a movie on October 4, 1988 in the last show at Madhuras Theater. The prosecution has alleged that the complainant and his friend, Chunilal Ganesh, had purchased cinema tickets of the last show and the complainant had gone inside the theater to see the movie and was under impression that his friend was also in the hall, but sitting somewhere else as both had different ticket numbers. According to the prosecution, after the show was over, the complainant came out and he waited near the scooter of his friend, Chunilal Ganesh, but his friend did not come out of the theater, and on enquiry, the complainant came to know that the police personnel of Rangila Police Chowky had come to raid as they had received complaints that some persons were doing black-marketing business of cinema tickets at Madhuras Theater. The complainant therefore went to Rangila Police Chowky at about 12.15 hours to enquire the whereabouts of his friend, Chunilal. One Police Sub-Inspector was present at the police chowky, and, through whom, he came to know that his friend, Chunilal Ganesh, was put behind the lock-up and a case was registered against him for black-marketing in cinema tickets. Thereafter, the complainant requested the Police Sub-Inspector (respondent No.1) who was present in the police chowky to release Chunilal Ganesh on bail. The complainant was told by respondent No.1 that unless an amount of Rs.150 was paid, his friend would not be released on bail. The complainant was told that he should go home and bring amount of Rs.150/- and respondent No.1 would be available in the police chowky till 8.00 a.m. in the morning hours. As the complainant did not want to pay illegal demand made by respondent No.2, he went to the office of the Anti-Corruption Bureau and lodged a complaint with the Police Inspector, ACB. The Police Inspector, ACB, called two independent panchas at the ACB office. The complainant took out one note in the denomination of Rs.100/- and another in the denomination of Rs.50/- and produced both the currency notes before the Police Inspector, ACB. The said currency notes were smeared with anthracene powder and the experiment of anthracene powder on the currency notes as well as on the hands of the complainant was carried out with the help of ultra-violet lamp. The complainant was instructed by the Police Inspector, ACB, to put both the currency notes which were smeared with anthracene powder in the left hand side pocket of the bush-shirt put

on by the complainant. The complainant was instructed not to take out the currency notes from his pocket till the currency notes were demanded by respondents Nos. 1 and 2. Panch witness No.1 was instructed to be in the company of the complainant and to watch giving of the currency notes to the respondents. The first part of panchanama was drawn at the office of ACB. After drawing the said panchanama, the Police Inspector, ACB, and other personnel of ACB, complainant and two panchas, had left the office in a government vehicle and went to Rangila Police Chowky.

3. The complainant and the panchas got down from the government vehicle at a distance from the Rangila Police Chowky. The complainant went to the Rangila Police Chowky and gave currency note of Rs.100/- to respondent No.2 who put it in his pocket of his bush-shirt. Panch witness No.1 gave a signal to the raiding party and, thereafter, the raiding party which consisted of the Police Inspector, ACB, and other police personnel accompanied by panch witness No.2 came to the Rangila Police Chowky and caught hold of the respondents. On the arrival of the raiding party, respondent No.2 tried to run away from the police chowky, but with the help of other police personnel, respondent No.2 was caught and brought to the police chowky. As there was commotion due to the raid, the procedure for drawing the second part of the panchanama could not be carried out at the police chowky and, therefore, the raiding party along with the respondents went to the office of the ACB. In the ACB office, the currency note in denomination of Rs.100 which was smeared with anthracene powder was taken out from the pocket of bush-shirt put on by respondent No.2 and an experiment with the help of ultra-violet lamp was carried out on the currency note which was smeared with anthracene powder. The number of currency note tallied with the number of currency note which was mentioned in the first part of the panchanama. The currency note and the bush-shirt which were smeared with anthracene powder were recovered and seized and the second part of the panchanama was prepared at the ACB office. After recording statements of witnesses, and collecting requisite evidence, sanction for prosecuting the respondents was obtained from the competent authority on August 14, 1989 and chargesheet was filed against the respondents on September 7, 1989 for the offences punishable under Sections 13(1) and 13(2) of the Prevention of Corruption Act, 1988. The learned Special Judge framed necessary charge against the respondents at Exh.5 for the offences punishable under Section 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988. The

charge was read over and explained to the respondents. The respondents did not plead guilty to the charge and claimed to be tried. Therefore, the prosecution led oral as well documentary evidence against the respondents to substantiate the charge. To prove the guilt of the respondents, the prosecution examined (1) P.W. 1, complainant, Atmaram Mohandas Patel, at Exh.13, (2) Panch No.1, P.W.2, Dashrathbhai Keshavlal, at Exh.15; and (3) Police Inspector, ACB, P.W. 3., Vinod Jashwantray Vyas, at Exh.21. The prosecution also produced documentary evidence such as panchanama with regard to raid carried out from the respondents at Exh.16, order of sanction for prosecuting the respondents at Exh.19 and Exh.20, and the complaint at Exh.22, etc. After recording of evidence of prosecution witnesses was over, further statements of the respondents were recorded under Section 313 of the Code of Criminal Procedure, 1973. In their statements, the respondents denied the case of the prosecution. The respondents did not lead any evidence in their defence. However, at the time of hearing of the arguments, they produced their written replies at Exh.26 and Exh.27, respectively.

4. The learned Special Judge, Ahmedabad City, after appreciating oral as well as documentary evidence and written replies of the respondents, and after hearing the arguments of the learned advocates of the respective parties, came to the conclusion that three important witnesses, namely, the complainant, panch witness No.1, and Police Inspector, ACB, were giving different versions with regard to the prosecution story. The learned Special Judge was of the opinion that the panch witnesses were not independent witnesses and they were selected just to make out a false case against the respondents. The learned Special Judge observed that two panch witnesses who were selected to witness the trap, were neighbours of the complainant and, therefore, they were interested witnesses. The learned Special Judge observed that in panchanama it was mentioned that the muddamal currency note was found from the pocket of bush-shirt put on by respondent No.2, whereas as per the deposition of the first panch, muddamal currency note in denomination of Rs.100 was recovered from the pocket of pant put on by respondent No.2. The learned Special Judge concluded that the prosecution had failed to prove beyond reasonable doubt that there was a motive and there was positive demand for gratification for doing or forbearing to do any official act or for showing favour or disfavour on receipt of the gratification and the actual receipt of the gratification by the respondents. On the basis of abovereferred to conclusions, the learned Special Judge

acquitted the respondents as mentioned in paragraph 1 of this judgment, giving rise to the present appeal.

5. Mr. D.P. Joshi, learned Additional Public Prosecutor, has taken us through the entire evidence of the present case. The learned APP submitted that the learned Special Judge ought to have placed reliance on the evidence of independent witness, namely, panch No.1, Dashratbhai Keshavlal, Exh.15. The learned counsel for the appellant further submitted that the muddamal currency note which was smeared with anthracene powder was found from the pocket of pant which was put on by respondent No.2 and, therefore, the prosecution has proved that respondent No.2 at the behest of respondent No.1 had demanded gratification and had actually received the said gratification from the complainant to release his friend, Chunilal, from the police lock-up. The learned counsel for the appellant further claimed that the evidence of the complainant was fully corroborated by the oral evidence of panch witness No.1 as well as Investigating Officer, Police Inspector, ACB, and, therefore, the learned Special Judge erred in not placing reliance on the evidence produced by the prosecution. It is stressed by the learned counsel for the appellant that the oral evidence was fully corroborated by the trap panchanama which was prepared at the ACB office and, therefore, the appeal should be allowed and the order of acquittal be set aside.

6. In our view, there is no substance in any of the contentions urged on behalf of the appellant. In a trap case, the prosecution case solely rests on the evidence of the complainant, panch witnesses and the evidence of the Investigating Officer and, therefore, their evidence should be consistent and reliable one. It must be noted that in the present case there are many major contradictions in the evidence of the complainant as compared with the panch witness and the Investigating Officer, Police Inspector, ACB. For proving the charges of corruption against the public servant, heavy burden lies on the prosecution to prove beyond reasonable doubt (i) that there was a motive, (ii) there was positive demand for gratification for doing or forbearing to do any official act or for showing favour or disfavour on receipt of the gratification, and (iii) there was the actual receipt of the gratification by the public servant. The evidence, which was led by the prosecution, does not establish that there was a demand of illegal gratification by respondent No.1 and respondent No.2 to release the friend of the complainant, namely, Chunilal

Ganesh. The offence was already registered vide C.R. No.325/88 against Chunilal Ganesh for black-marketing in cinema tickets. Therefore, it was not possible for the police officer in charge of the police station to release said Chunilal Ganesh. It was not within the powers of respondents Nos. 1 and 2 to release said Chunilal Ganesh from the police lock-up. The only remedy, which was available to get Chunilal Ganesh released, was to file a bail application in the competent court of law. The story, which has been cooked up by the complainant, is difficult to swallow. The complainant was enraged as the respondents had registered offence against Chunilal Ganesh for indulging in blackmarketing in cinema tickets. The raid, which was carried out by the ACB personnel, in a short-span of time, was well nigh impossible. The complainant had contacted ACB office in the late hours of night. As the raid was carried out in a hurried manner, no independent witnesses were selected as panchas. The interested version of the complainant and panch witness No.1 speaks volumes about the cooked up prosecution case against the respondents to wreck vengeance against the respondents as they had lodged criminal case against Chunilal Ganesh.

7. Both the panch witnesses were neighbours of the complainant and they were selected as panchas at the behest of the complainant. Thus, they were interested witnesses. As per the panchanama, and evidence of panch witness No.1, panch witness No.1 was instructed to give signal after the respondents had accepted illegal gratification by making a cough, but evidence of Investigating Officer shows that signal was given by the complainant. As per the oral evidence of panch No.1, Dashratbhai Keshavlal, Exh.15, the agreed signal was to light a beedi and not of making cough. So, there is contradiction with regard to giving signal to the raiding party about acceptance of illegal gratification by the respondents. As per the oral evidence of Police Inspector, ACB, Mr. Vyas, Exh.21, the raiding party, the complainant and the panchas had gone to Rangila Police Chowky in a government vehicle, whereas panch witness No.1 and complainant, Atmaram Mohanlal Patel, Exh.22, deposed that the complainant and panch witness No.1 had gone on a scooter and not in a government vehicle. Panchanama Exh.16 shows that all the members of the raiding party including the complainant and the panchas had gone to Rangila Police Chowky in a government vehicle. Thus, there are contradiction in the oral evidence of the complainant, the first panch witness, Police Inspector, ACB, Mr. Vyas and the contents of the panchanama. As per the panchanama, Exh.16, muddamal

currency note in the denomination of Rs.100/- was found from the pocket of bush-shirt put on by respondent No.2, whereas as per the oral testimony of panch witness No.1, the muddamal currency note was found from the pocket of pant put on by respondent No.2. Therefore, in our opinion, there are major contradictions with regard to laying of trap and recovery of the muddamal currency note from the pocket of respondent No.2. One more thing requires to be noted is that the panch witness was found moving in the company of respondent No.2 for considerable long time and, yet, senior police officer of the rank of Police Inspector, ACB, Mr. Vyas, carried out the raid. This also creates a serious doubt and suspicion in the story put forward by the prosecution with regard to laying of the trap wherein the respondents were caught for accepting the illegal gratification. A suspicion was already raised when respondent No.2 was found for a considerable long time in the company of the panch. The Police Inspector of ACB should not have carried out the raid when such a suspicion was raised. The raiding party ought to have taken all the precautions in selecting an independent person to remain as a panch in a raid because the raid in a corruption case should be fool-proof. Many major contradictions have come up in the evidence of the prosecution witnesses which raised serious doubts about laying of trap. The contradictory version of the prosecution witnesses as discussed above makes the version of the prosecution thoroughly improbable. Taking into consideration over all view of the entire evidence produced by the prosecution, we are of the view that there is absolutely no evidence against the respondents to prove that they had demanded illegal gratification from the complainant and had accepted the said illegal gratification for releasing his friend, namely, Chunilal Ganesh. It will not be out of place to hold that the complainant with oblique motive to wreck vengeance against the Police Officers of Rangila Police Chowky, had cooked up a complaint to falsely involve the respondents in a corruption case because the complainant has in terms admitted that as he was harassed by police constable by name Silasbhai, he had gone to office of A.C.B. The offence for which the respondents were charged, is of serious nature and in absence of positive evidence, no government servant can be held guilty of such a serious charge. Under the circumstances, it cannot be said that any error is committed by the learned Special Judge in acquitting the respondents of the offences with which they were charged.

8. This is an acquittal appeal in which the court

would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to interfere with the order of acquittal more particularly when the evidence has not inspired confidence of the learned Special Judge who had an advantage of observing demeanour of witness. On overall appreciation of evidence, we are satisfied that there is no infirmity in the reasons assigned by the learned Special Judge for acquitting the respondents. Suffice it to say that the learned Special Judge has given cogent and convincing reasons for acquitting the respondents and the learned Additional Public Prosecutor has failed to dislodge the reasons given by the learned Special judge in order to convince us to take the view contrary to the one already taken by the learned Judge. Therefore, the acquittal appeal deserves to be rejected.

9. For the foregoing reasons, we do not find any substance in the appeal. The appeal, therefore, fails and is dismissed. Muddamal articles be destroyed in the terms of the impugned judgment.

(swamy)